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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

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In re:

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TEMBLOR PETROLEUM
8
COMPANY, LLC,

9
Debtor-in-Possession.

Case No. 20-11367-A-11

Chapter 11

DC No. LKW-12

Date: December 9, 2020

Time: 9:30 a.m.

Place: Bankruptcy Court – Department A

2500 Tulare Street, Fifth Floor

Fresno, CA

Judge: Honorable Jennifer E. Niemann

12
MOTION FOR ORDER AUTHORIZING DEBTOR'S MEMBERS TO PAY
13
FEES AND COSTS INCURRED BY DEBTOR'S ATTORNEYS

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TO THE HONORABLE JENNIFER E. NIEMANN, BANKRUPTCY JUDGE:

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The Motion for Order Authorizing Debtor's Members to Pay Fees and Costs Incurred by
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Debtor's Attorneys filed by Temblor Petroleum Company, LLC ("Debtor") represents:

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I.

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INTRODUCTION

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1. Debtor is a Limited Liability Company organized and doing business in the
State of California. Debtor incurred debt in its business and Debtor determined in the Spring of
2020 that Debtor could not repay the debt or resolve its debtor-creditor problems without the
relief available to it under the Bankruptcy Code. For that reason, Debtor filed a Voluntary
Petition under Chapter 11 on April 9, 2020. A Trustee has not been sought or appointed in
Debtor's case and Debtor is a "debtor-in-possession" in its Chapter 11 case.

2. Debtor filed an Application for Order Authorizing Employment of General
Counsel per 11 USC Section 327(a) ("the Employment Application") on April 15, 2020 as

1 required by the law. Through the Employment Application, Debtor sought authorization to
2 employ the Law Offices of Leonard K. Welsh ("the Welsh Firm") as general counsel for
3 Debtor in its Chapter 11 case. The Bankruptcy Court approved the Application and entered an
4 Order Authorizing Employment of General Counsel per 11 USC Section 327(a) ("the
5 Employment Order") on May 1, 2020. The Employment Order authorized Debtor to employ
6 the Welsh Firm as its general counsel and provided that (a) the Welsh Firm's employment was
7 subject to the terms and conditions of 11 USC Section 327 and 329-331, (b) the Welsh Firm
8 could apply for interim compensation in the Chapter 11 case as permitted by 11 USC Section
9 331, and (c) compensation paid to the Welsh Firm would be paid at the "lodestar rate"
10 applicable at the time that services are rendered. See Order Authorizing Employment of
11 General Counsel per 11 USC Section 327(a), Paragraphs 1, 3, and 5 at Page 2.

14 3. The Employment Application included a copy of the Legal Services Agreement
15 between Debtor and the Welsh Firm as an Exhibit ("the LSA"). The LSA confirmed the terms
16 under which the Welsh Firm agreed to represent Debtor in its Chapter 11 case and provided:

17 a. the Firm's representation in Debtor's Chapter 11 case was limited to
18 representing Debtor and no other individual or entity associated with Debtor unless expressly
19 agreed otherwise in writing and

20 b. Debtor was the only person responsible for paying the fees and costs to
21 be incurred by the Firm in Debtor's case.

22 See Legal Services Agreement between Debtor and the Welsh Firm – a copy of which included
23 in Exhibits to Motion for Order Authorizing Debtor's Members to Pay Fees and Costs Incurred
24 by Debtor's Attorneys on file herein. The LSA did not provide for the payment or guarantee
25 payment of the fees and costs to be incurred by the Welsh Firm by Debtor's members.
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7. For the reasons given above and the authorities cited below, Debtor and the Welsh Firm request the Court enter an Order authorizing Debtor's members to pay fees and costs owed to the Welsh Firm so Debtor's case can proceed efficiently and economically.

**THE LAW PERMITS DEBTOR'S MEMBERS TO PAY THE FEES AND COSTS
OWED TO THE WELSH FIRM IF THE TEST ADOPTED IN THE
LOTUS PROPERTIES CASE IS SATISFIED**

1 8. The question of whether a third party can pay the fees and costs incurred by the
2 debtor's attorney in a Chapter 11 case has been addressed by a number of Courts throughout
3 the nation. See In re Waterfall Village of Atlanta, 103 BR 340, 345 (Bankr. ND GA 1989) and
4 cases cited therein. The Court in Debtor's case has held that "Bankruptcy Courts in the Ninth
5 Circuit have adopted a five-part test to serve as a guideline where counsel for the debtor is to be
6 funded by debtor's insiders. In re Lotus Props., LP, 200 BR 388, 392-395 (Bankr. CD CA
7 1996)." See Order Approving Fifth Application for Allowance of Fees and Expenses Filed by
8 Law Offices of Leonard K. Welsh, Page 1, at Lines 19-22. The Court explained that the test
9 includes the following elements:
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- 11 a. the arrangement must be disclosed to the debtor and third party payor-insider,
- 12 b. the debtor must expressly consent to the arrangement,
- 13 c. the third party payor-insider must retain independent counsel and understand
14 that debtor's attorney's duty of loyalty is owed exclusively to the debtor as the client,
- 15 d. the relationship between the third party payor-insider, the debtor, their attorneys,
16 and their contractual arrangement concerning fees must be disclosed to the Court at the
17 outset of the debtor's bankruptcy representation, and
- 18 e. the debtor's attorney must demonstrate and represent to the Court's satisfaction
19 the absence of non-disinterestedness, actual conflict, or impermissible potential for a
20 conflict of interest.
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23 Id., Page 1, at Lines 23-28 and Page 2, at Lines 1-9.

- 24 9. Each of the elements found in the Lotus Properties case has been satisfied by:
- 25 a. the Welsh firm disclosing its request that Debtor's members pay the fees and
26 costs owed to the law firm to Debtor's Managing Members-Philip Bell ("Mr. Bell") and
27 Will McGrath ("Mr. McGrath"),
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- 1 b. Debtor expressly consenting to the payment of the fees and costs owed to the
2 Welsh Firm by Debtor's members,
- 3 c. Mr. Bell and Mr. McGrath consulting with independent counsel about the
4 Motion and the fact that the Welsh Firm's duty of loyalty is owed exclusively to Debtor,
- 5 d. the Welsh Firm's making its relationship with Debtor and third party insiders
6 and the firm's arrangement for payment of fees clear to all parties concerned in the LSA
7 and the Employment Application where the parties acknowledged that the Welsh Firm
8 represented only Debtor and Debtor was the only person or party legally responsible for
9 payment of the fees and costs to be incurred by the law firm, and
- 10 e. the Welsh Firm demonstrating and representing that it is disinterested in the
11 present case and no actual or impermissible potential for a conflict of interest exists.

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14 See Legal Services Agreement between Debtor and the Welsh Firm, the Employment
15 Application, and the Declarations in Support of Motion for Order Authorizing Debtor's
16 Members to Pay Fees and Costs Incurred by Debtor's Attorneys on file herein.

17 10. The Court in Lotus Properties said the following facts would alleviate concerns
18 about disinterestedness, actual conflicts, or impermissible potential conflicts of interest:

- 19 a. the third party payor-insider does not have individual legal liability for payment
20 of the fees and costs in question,
- 21 b. the third party payor-insider's contributions are not deemed to be a guarantee of
22 the fees and expenses, and
- 23 c. the payment of the fees and expenses do not create a direct obligation by the
24 third party payor-insider.

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26 See In re Lotus Properties, LP, supra, at 394. None of the concerns raised in the Lotus
27 Properties case identified above are present in Debtor's case. See Declaration of Leonard K.
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1 Welsh in Support of Motion for Order Authorizing Debtor's Members to Pay Fees and Costs
2 Incurred by Debtor's Attorney on file herein.

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4 **III.**

5 **COMPENSATION TO THE WELSH FIRM IN DEBTOR'S CASE MUST BE**
6 **REVIEWED AND APPROVED BY THE COURT**

7 11. Employment and compensation of professionals in a Chapter 11 case is
8 governed by 11 USC Sections 327-331. Section 328(a) provides any agreement concerning a
9 professionals' employment or compensation by a debtor-in-possession is subject to the Court's
10 review and approval. This includes compensation of Chapter 11 professionals by non-debtor
11 third parties. See In re Kelton, 109 BR 641 (Bankr. D VT 1989). This means compensation to
12 the Welsh Firm by Debtor's members must be reviewed and approved by the Court.

13 **IV.**

14 **CONCLUSION**

15 11. For the reasons given above and shown by the evidence submitted in support of
16 the Motion, Debtor prays that:

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18 a. the Motion for Order Authorizing Debtor's Members to Pay Fees and Costs
19 Incurred by Debtor's Attorney be granted,
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21 b. Debtor's members be authorized to pay the fees and costs owed to the Law
22 Offices of Leonard K. Welsh for services rendered and costs incurred by the firm and
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24 c. Debtor be granted such other relief as the Court deems to be just and proper.

25 Dated: November 17, 2020

LAW OFFICES OF LEONARD K WELSH

26 Leonard K. Welsh

27 By: /s/ Leonard K. Welsh

28 LEONARD K. WELSH

Attorneys for Debtor-in-Possession